

**COUNTY OF MILWAUKEE**  
**Inter-Office Communication**

**Date:** February 3, 2003  
**To:** Lee Holloway, Chairman, Milwaukee County Board of Supervisors  
**From:** Jerome J. Heer, Director of Audits  
**Subject:** Sheriff's Department Contract for Pharmaceutical Services, 1996 – 2002

The Sheriff's Department requested the assistance of the Department of Audit in reviewing billings for inmate prescription drugs submitted by Roeschen Omnicare (formerly Roeschen Healthcare Corporation). The Medical and Mental Health Program Administrator's cursory review of billings received from Roeschen since April 2002 (when he took his current position with the Sheriff's Department) had indicated to him that the County may have been overbilled to some extent for prescription drugs. We accepted the request based on the significant cost to the Sheriff's Department for prescription drugs, which over the last two years has totaled about \$1.8 million for 2001 and \$2.3 million for 2002.

Each monthly billing submitted by Roeschen consisted of dozens of pages, listing line-by-line details of each individual prescription dispensed to each inmate for the month. Each line contained the inmate's name, the name and code of drug dispensed, the number of units dispensed, and the price charged for that prescription. The data was sorted by inmate. The data was not provided in electronic format, which would have assisted the Sheriff's Department in better analyzing monthly bills to attempt to verify if the amounts billed were proper.

Without the ability to do a global analysis of billings using electronic media, we reviewed the paper invoice for the randomly selected month of May 2001. We manually created a database from this invoice, which totaled \$199,759 for 7,298 prescriptions pertaining to 720 different drugs, to determine the extent to which overbillings may have occurred. The results, detailed later in this memo, showed only minor percentage overpayments to Roeschen. However, it did indicate a need to strengthen contract language to ensure the intentions of all parties are properly documented.

**Background**

In 1995, the Sheriff's Department solicited proposals to provide contractual pharmaceutical services for the jail and House of Correction for inmates housed in both facilities. The contract was awarded to Roeschen for a three-year period commencing in early 1996. The contract was subsequently extended for an additional three years, ending in April 2002. From May – August 2002 the contract

had been extended on a month-to-month basis pending the completion of a new RFP for pharmaceutical services. In September 2002 a new contract was executed with a different vendor.

We reviewed the original 1996 contract and the extension in 1999 to determine what Roeschen was allowed to bill the County for its services. The contract did not clearly identify the price that Roeschen could charge the County for all drugs. The contract states:

“Owner shall pay to Contractor for the performance of those fees, rates and amounts described and contained in the Pricing Proposal incorporated and made part of Contractor’s Proposal dated October 1, 1995 identified herein, and the Written Summary of Questions and Answers at the oral presentation for pharmacy likewise described herein (“Contract Sum”) which also contains the unit prices hereby accepted by the owner.”

On the surface, this would seem to indicate a detailed price list for all drugs. However, the Pricing Proposal included only 40 drugs, which at the time of the RFP represented the most frequently prescribed drugs. To put this in perspective, the May 2001 invoice contained 720 drugs. The contract is silent as to the billing rate for all other drugs not contained in the original Pricing Proposal.

Also, the contract contained no provision for price increases over the contract period for the 40 drugs listed on the Pricing Proposal. Thus, strictly interpreted, the contract language suggests that Roeschen could be required to maintain the same price over the contract period. By following the original Pricing Proposal, the effect on the May 2001 billing would have been a net overpayment of \$3,011 by the Sheriff’s Department. This represents a 25.3% overpayment for the month for the 40 drugs.

However, discussions with Sheriff’s Department staff familiar with the original contract and an official from Roeschen indicated that a fixed price list was not the intent of the contract. Not only would Roeschen have lost considerable revenue to the County by freezing the prices as noted above, it would likely have lost several times that amount in its role as a provider of drugs for the Title 19 program. Under Title 19 rules, the program must receive the lowest rate billed for drugs by participating pharmaceutical companies like Roeschen. If Title 19 subsequently discovered that Roeschen had billed lower rates to the County than it had to Title 19, Title 19 could have recomputed its payments based on the lower rates charged to the County and recovered all overpayments. A Roeschen official estimated that 75% of its business is with Title 19, so the potential overpayment to Title 19 could have been substantial.

Although neither the Sheriff's Department nor Roeschen could provide anything in writing to support their positions, both parties agreed that it was mutually intended that prevailing Title 19 rates were to apply. This situation further demonstrates the need to include clear contract language as to what was to be the allowable billing amounts, for the protection of all parties.

We performed an additional analysis for May 2001 to identify possible overpayments under the assumption that Title 19 rates were to be billed for all drugs. This analysis was hampered not only by the fact that the data had to be manually entered, but also by difficulty in obtaining historical Title 19 rates for specific drugs. While current information is available, historical data had to be manually researched and retrieved by Title 19 program staff. As a result, we limited our analysis to those drugs costing more than \$1,000 for the month. This amounted to 39 drugs totaling \$120,288, representing about 60% of the total \$199,759 in drug costs for the month.

We calculated that 10 drugs were overbilled for a total of \$2,340, with overbillings ranging from \$45 to \$1,166. This was offset by underpayments for six other drugs totaling \$831, ranging from \$31 to \$266. The net effect was an overpayment of \$1,509, representing 1.25% of the \$120,288 tested. The remaining 23 drugs had over- or underpayments of less than a \$1 each. The differences could be due to the fact that Title 19 rates are updated monthly (though not all rates necessarily change every month). If Roeschen's billing rates were not similarly updated, differences could occur.

### **Limits on County Payments**

State statutes limit what the Sheriff can pay for drugs to Title 19 rates. Enforcing this statute would require that the Sheriff's Department have a control system in place to prevent paying higher rates. Necessary controls were not in place. According to Sheriff's Department health care officials, the billings from Roeschen were reviewed for the first few months of the contract to determine if the quantity of drugs claimed as dispensed by Roeschen was supported by inmate files. This labor-intensive task was made easier because the detailed invoices were sequenced by patient name. When no significant problems were noted, the review was discontinued.

However, no checks were performed to determine if the rates charged were consistent with contract requirements. This may have been due to the ambiguity of the contract language. Further, because the invoice was not summarized by drug type, such a review would have been a daunting manual task. Verification of rates charged could have been simplified had Sheriff's Department staff requested that Roeschen provide invoice data electronically in addition to hard copy. The data

then could have been sorted by drug type, allowing for simple comparison with current on line Title 19 information.

### **New Contracting Method**

The requirement to pay no more than Title 19 rates still exists. However, establishing a system to enforce the requirement is now more complex because the Sheriff's Department no longer pays for drugs on a prescription basis. Instead, beginning in September 2002, the Sheriff's Department entered into a contract with a new vendor to pay a per capita rate for each inmate. Under this method, the vendor for prescription drugs provides all prescribed drugs, regardless of the volume needed. The County's exposure is limited to the per capita charge for each inmate. The expectation is that this will reduce the County's overall inmate drug costs.

However, this method provides no means for determining if the County is paying more than Title 19 rates for specific drugs. As a practical alternative, the Sheriff's Department could determine if overall the County is paying no more than Title 19 rates. This could be done monthly by multiplying the volume of each drug prescribed by the applicable Title 19 rate, then comparing that sum for all drugs to the amount of per capita premiums paid. There currently is no system in place to perform such an analysis.

### **Right to Audit Clause**

In addition to unclear contract language with regard to allowable billing amounts, the contract with Roeschen did not have a right to audit clause. This is a requirement for all County professional service contracts under ss. 56.30(6)(e) of the General Ordinances of Milwaukee County and as described in s. 1.13 of the Administrative Manual, along with other standard contract provisions. Such a requirement, along with a record retention requirement, could have proved valuable in requiring Roeschen to provide invoice data in electronic form, thus allowing us to more easily perform a global review of all contract payments. Without the right to audit clause, a Roeschen official indicated a desire to reserve judgment on whether to provide such data, if indeed it still existed (he suggested that it may no longer be available, but did not confirm it). He further indicated that since Roeschen no longer was under contract with the County, a fee would likely be imposed to provide requested data.

The contract had been approved as to form by Corporation Counsel, but apparently the omission of the right to audit clause was overlooked.

### **Recommendations**

The contract with Roeschen demonstrated a need not only to have clearer contract language, but also to ensure that controls are in place to provide assurance that contract provisions are enforced. We recommend that the Sheriff's Department:

- 1. Recover \$3,011 in payments made to Roeschen in excess of Title 19 rates for the month of review.*
- 2. Implement a system that helps ensure that the Sheriff's Department is in compliance with County Ordinances restricting drug payments to no more than Title 19 rates.*
- 3. Follow ss. 56.30(6)(e) of the Milwaukee County Ordinances and s. 1.13 of the County Administrative Manual related to standard components for all County professional service contracts.*

Please refer this report to the Committee on Finance and Audit.



Jerome J. Heer  
Director of Audits

cc: Milwaukee County Board of Supervisors  
Richard D. Nyklewicz, Jr., Chairman, Committee on Finance and Audit  
Scott Walker, Milwaukee County Executive  
David A. Clarke, Jr., Milwaukee County Sheriff  
William Domina, Corporation Counsel  
Michael E. Kalonick, Medical and Mental Health Program Administrator, Sheriff's Dept.  
Rob Henken, Director of County Board Research  
Laurie H. Henning, Chief Committee Clerk, County Board Staff  
Mark Celebre, Vice-President, Roeschen Omnicare